IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

DATATREASURY CORP. Plaintiff vs. CITY NATIONAL CORPORATION; and CITY NATIONAL BANK, Defendants.	§ § § § § § § § § §	No. 2:06CV-165 (DF) Consolidated with No. 2:06CV-72 (Lead case) Hon. David J. Folsom JURY TRIAL DEMANDED

OPPOSITION OF DEFENDANTS CITY NATIONAL BANK AND CITY NATIONAL CORPORATION TO PLAINTIFF'S MOTION TO AUTHORIZE JURISDICTIONAL DISCOVERY

Defendants City National Bank and City National Corporation (collectively, the "CNB Defendants") oppose the motion of plaintiff DataTreasury Corporation ("DTC") requesting that the Court (1) authorize broad early discovery, which DTC euphemistically characterizes as limited to "jurisdictional" issues, and (2) exempt all such discovery from whatever limits are eventually imposed by the Court. As discussed below, no jurisdictional discovery is warranted in this case, and even if it were, any such discovery must be narrowly tailored to the issues presented in the CNB Defendants' Motion to Dismiss and should not be exempt from the discovery limits that will be imposed in this case.

I. No Jurisdictional Discovery Is Warranted

Discovery on matters of personal jurisdiction should not be permitted unless the motion to dismiss raises issues of fact. *Wyatt v. Kaplan*, 686 F.2d 276, 284 (5th Cir. 1982). When the lack of personal jurisdiction is clear, as it is in this case, additional discovery would serve no purpose and should not be permitted. *Id.* ("Discovery on matters of personal jurisdiction, therefore, need not be permitted unless the motion to dismiss raises issues of fact. When the lack

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of personal jurisdiction is clear, discovery would serve no purpose and should not be permitted."); *see also Kelly v. Syria Shell Petroleum Dev. B.V.*, 213 F.3d 841, 856 (5th Cir. 2000) ("When the lack of personal jurisdiction is clear, discovery would serve no purpose and should not be permitted. Appellants' brief does not describe . . . what facts they hoped to obtain from such discovery, or how it would produce information that would support specific jurisdiction for Syria Shell.") (internal quotation removed). Here, the extremely broad discovery DTC seeks is unnecessary, as DTC has not met its burden of presenting a *prima facie* case that jurisdiction is appropriate over either defendant in this case. Moreover, DTC bases its request for discovery on its own invented "conflicts" between the CNB Defendants' Declarations and other, entirely consistent, facts. Since no such conflicts exist—as demonstrated in the CNB Defendants' Reply in Support of its Motion to Dismiss—there is no call for discovery.

Moreover, the Federal Rules of Civil Procedure require that DTC have a sound factual predicate for jurisdiction *before* filing suit in this District. DTC had no such factual basis, given that DTC's Opposition to the CNB Defendants' Motion to Dismiss rests on a combination of false innuendo and flawed legal reasoning. Filing suit based on wholly conclusory allegations that do not even identify the "products and services" accused of infringement—which is all that DTC offers in its Amended Complaint—and thereafter seeking to pursue a jurisdictional fishing expedition should not be permitted. *Base Metal Trading, Ltd. v. OJSC "Novokuznetsky Aluminum Factory,"* 283 F.3d 208, 216 n.3 (4th Cir. 2003) ("[W]here, as here, the plaintiff simply wants to conduct a fishing expedition in the hopes of discovering some basis of jurisdiction, we see no reason to overturn the district court's exercise of discretion."). That is exactly what DTC has done in this case.

II. **If The Court Determines That Jurisdictional Discovery Is Warranted, That Discovery Must Be Narrowly Tailored And Should Not Be Exempt From Discovery Limits**

Even if some limited discovery were warranted, DTC's requested discovery is not tailored to the narrow jurisdictional issue before the Court—whether the CNB defendants specifically directed any allegedly infringing activities to this District. In those circumstances where jurisdictional discovery is permitted, that discovery must be exclusively focused on the jurisdictional issues in dispute. *See, e.g., Gateway Logistics Group, Inc. v. Dangerous Goods Management Australia Pty, Ltd*., 2006 U.S. Dist. LEXIS 25651, at *8 (S.D. Tex. Feb. 9, 2006) ("Gateway may conduct jurisdictional discovery limited to the defendants' allegedly tortious acts directed into Texas").

Instead, DTC requests discovery that is not only excessively voluminous, but in many respects is entirely unlimited by subject matter, including discovery of virtually every document relating to every Board of Directors’ meeting that the CNB Defendants have ever held, such as "minutes, internal memos, emails and correspondence files, and a multitude of other documents surrounding these executives’ activities." (Motion at 2.) In a similarly excessive vein, DTC requests the opportunity to conduct "depositions of the dual position executives identified in Plaintiff’s Response to Defendants' Motion to Dismiss." (*Id.*) As shown in the CNB Defendants' Reply in Support of their Motion to Dismiss, none of this proposed discovery has any relevance to the jurisdictional inquiry.

While the CNB Defendants believe that the Court can and should grant the CNB Defendants' Motion to Dismiss without any additional discovery, the CNB Defendants sought to avoid the necessity of requiring this Court to review and rule on this motion. Accordingly, on June 27, 2006, the CNB Defendants' counsel sent an email to DTC's counsel proposing to allow DTC to conduct discovery narrowly tailored to the jurisdictional issues raised by the CNB

Defendants' Motion to Dismiss. (Ex. A, attached hereto). DTC made no response to this proposal, and its true intentions are very clear: DTC desires to initiate broad discovery, irrespective of its relevance to the narrow jurisdictional issues at issue—and not have any of that discovery count against the limits that this Court will inevitably impose upon the parties.[1]

III. Conclusion

For the foregoing reasons, the CNB Defendants respectfully request that this Court deny DTC's motion to authorize jurisdictional discovery. In the event that the Court determines that some narrow jurisdictional discovery is appropriate, the CNB Defendants respectfully request that the Court limit that discovery to the proposal attached hereto as Exhibit A and order that all such discovery shall be counted against the discovery limits that the Court will eventually impose upon entering a Discovery Order and Docket Control Order in this case. Unless this discovery counts against those limits, DTC has no incentive whatsoever to be fair and efficient in utilizing the discovery process.

Respectfully submitted,

/s/ David I. Gindler

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[1] DTC's ulterior motives are even more apparent in light of the 5,883 proposed Requests for Admission that the CNB Defendants received from DTC's counsel.

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Certificate of Service

I certify that a copy of CNB's Response to Plaintiff's Motion to Authorize Jurisdictional Discovery was served on July 10, 2006, to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Local Rule CV-5(a)(3),

By: /s/ David I. Gindler
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